

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

77-7086

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In The
United States Court of Appeals
For The Second Circuit

CHESA INTERNATIONAL, LTD.,
Plaintiff-Appellee,

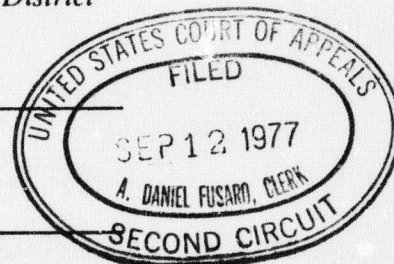
vs.

FASHION ASSOCIATES, INC.; HONG KONG QUALITY
KNITTERS, LTD.; and JEROME FINKELSTEIN;
Defendants-Appellants.

*On Appeal from United States District Court, Southern District
of New York.*

**REPLY BRIEF FOR
DEFENDANTS-APPELLANTS**

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GENERAL COMMENT ON APPEALABLE NATURE OF THE CONTROVERSY

Where there has been consolidation of actions, the appropriate time for appeal is upon entry of final judgment in the remaining action. The final judgment in the instant case was entered on January 24, 1977 from which judgment this appeal was taken in a timely fashion.

Although an interlocutory appeal was taken, said appeal was abandoned when it was urged that the appeal was premature and that the appeal should be delayed until after final judgment so as to avoid fragmentation of or "piecemeal" appeals.

On principle, such interlocutory appeals are permissive as the court below had complete control over the interlocutory orders until the entry of the final judgment. The interlocutory orders are then merged into the final judgment.

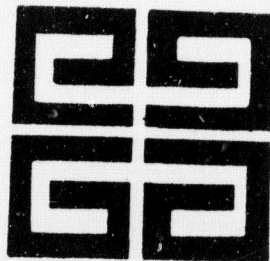
Extending the principle, had the prior appeal resulted in the deliberation of the Court of Appeals, a refusal to reopen the same argument may be elicited; however, in the appeal at hand there were no issues decided by the Court of Appeals and the Defendants-Appellants heeded the urging then presented to avoid a premature appeal.

STATEMENT OF THE CASE

This case is an appeal from the opinion of the Honorable Lloyd F. MacMahon dated January 24, 1977 and reported at 425 F. Supp. 234. The case is one of alleged trademark infringement that consolidated two actions below. Following the suggested procedure a prior interlocutory appeal to this Court was abandoned so as to avoid fragmentation or "piecemeal" appeals. The dismissal attached to grounds of appeal that were entirely permissive in nature.

The first action, Docket 75 Civ. 3522 LFM, concerned a "4G" mark which was found by the Court below to be a common-law trademark of a French company, Givenchy S.A.; to be duly licensed to U.S. company, Chesa International, Ltd.; and to be infringed by Fashion Associates, Inc. The final judgment of January 24, 1977 was the conclusion of the trial below from which judgment this appeal was timely filed.

This case relates to sportswear for women, and more particularly women's T-shirts. On July 28, 1975, the United States District Court, Southern District of New York, found that Givenchy, S.A. had common-law trademarks in several emblems consisting of four G's, which are reproduced below:



The plaintiff-appellee, Chesa International, Ltd. (hereinafter "Chesa"), alleged that the trademark was licensed to it and infringed by a defendant-appellant, Fashion Associates, Inc. A preliminary injunction against that defendant-appellant was issued on the same day.

A permanent injunction was entered on October 21, 1975 on consent. It enjoined Fashion Associates et al from using the four-G emblem.

The Court below held that the order was violated by the defendants-appellants upon the sale by Hong Kong Quality Knitters, Ltd., of a two-G emblem formed from squared G's.

On June 9, 1976, the same lower Court:

- (a) held defendants-appellants in contempt of Court;
- (b) amended the judgment of October 21, 1975 so as to provide damages that Chesa had waived; and

(c) appointed Douglas F. Eaton, Esq. as a Special Master, and directed him to determine the damages by way of:

(1) the profits made by the defendants-appellants from the aforementioned sales from October 21, 1975 through June 9, 1976 (or Chesa's loss of anticipated profits, if greater); and

(2) the profits made by Fashion Associates, Inc. from the infringing sales prior to October 21, 1975 (or Chesa's loss of anticipated profits, if greater).

In the proceedings before the Special Master, Chesa elected to prove the defendants' profits, rather than its own loss of profits. After extensive discovery and hearings, the Special Master filed his report with the Court on September 10, 1976. The Special Master found that the plaintiff had sustained damages of \$18,105.00 based on defendant Fashion Associates' profits on sales of T-shirts bearing the "G" emblem prior to October 21, 1975, plus \$2,586.00 based on all defendants' profits on their sales from October 21, 1975 through June 8, 1976. The Special Master also recommended the imposition of sanctions under Rule 37(b) (2) (B) and the award of certain of Chesa's attorneys' fees in the amount of \$2,885.00.

After defendant-appellant filed Objections to the Report, dated September 14, 1976 and Chesa filed their Motion to Confirm the Report,

dated October 8, 1976, an Opinion cited hereinabove was prepared by the Honorable Lloyd F. Mac Mahon. The Opinion issued on January 24, 1977 and in due course, was reduced to the Final Judgment from which this appeal is taken.

The Special Master disregarded the position taken by counsel below that certain small portions of the discovery were beyond scope of the Court-directed inquiry as to damages. The defendant-appellant's counsel took the position that the information requested by the Master to wit questions 1, 4 and 13 was in excess of his jurisdiction in that the Master's jurisdiction was limited to those customers and embroiderers who were involved with Chesa's marks. At no time did counsel ever state that he would not supply the balance of items requested, but did point out that his clients were having difficulty coming up with the requested information. Counsel did request that any proposed sanctions be held in abeyance until the opportunity existed to provide all the information. Subsequently, the Special Master prepared the aforementioned report calling for sanctions against defendant-appellant which sanctions were later granted and incorporated into the judgment of the Court below.

In the Court below, testimony was received from Jerome N. Finkelstein, one of the named defendants, that in the jargon of the

trade he "knocked off" or copied the design as was customary in the industry. Thus, once high-fashion houses introduce a design or style, without in some way reserving the said design or style, the trade practice is to copy freely and sell "knock-offs" to other marketplaces than those served by the name designers. The testimony includes responses as follows [Transcript, pp. 68, 71, and 72; RA Document No. 13]:

Q. You never told any of your customers that the T-shirts you manufactured and sold were manufactured or designed by Givenchy, did you?

A. We never made a representation to that effect.

Q. Did you tell them they were manufactured by Givenchy?

A. No, sir.

Q. Did you tell them they were manufactured by the Plaintiff [Chesa]?

A. No, sir...

[at 71] Q. Is it not correct that the primary .. similarity between these two T-shirts, Plaintiff's Exhibit 1 and Defendant's Exhibit B, is the Givenchy trademark?

A. I don't know this to be a Givenchy trademark. I can't answer. I knocked off a design. I am not testifying that it's a Givenchy Trademark.

Q. You are testifying that these two T-shirts are designed similarly, is that right?

A. I knocked off a style. I did not knock off a trademark. I don't know that this is a trademark.

The Court further upon issuing the preliminary injunction concluded, "There can be no doubt about that [referring either to tending to confuse the purchasing public or to trademark infringement]. Indeed the very ad from which the Defendant [Fashion Associates] copied the design ... has the word Givenchy, he did that last March."

ARGUMENT

POINT I. THE DEFENDANT IN A CASE OF CIVIL CONTEMPT MAY ATTACK BY APPEAL THE BASIS FOR A PERMANENT INJUNCTION, REGARDLESS OF PRIOR DISMISSED INTERLOCUTORY APPEAL.

It is argued that the dismissal of the prior appeal was discretionary with the Court of Appeals notwithstanding the "terms" which could have been arranged by the Court [ref. Shellman v. U.S. Lines, Inc. 528 F.2d 675 (CA Cal. 1975)]. Unlike Blount, cited by the plaintiff-appellee, the first appeal in the instant case was entirely permissive pursuant to 28 U.S.C. §1292(a) and was abandoned at the urging of the Court in order to avoid piecemeal appeals or fragmentation of issues. Even arguendo if the plaintiff's 4G mark and the adjudging of the defendants in contempt cannot be challenged, the appeal as to the following particular findings are not excluded by the prior appeal:

- (1) validity of the 2G mark;
- (2) status of the trademark license;
- (3) establishment of common-law trademark in the U.S. by Givenchy S.A., operating in France; and
- (4) relevancy of the multiplicity of trademarks.

Professor Rendleman in his recent scholarly writings on contempt and injunction procedures, namely, "Toward Due Process in Injunction Procedure," University of Illinois Law Forum, p 221 (1973) and "Beyond Contempt: Obligors to Injunctions," 53 Texas Law Review 873 (1975) seems to echo the warnings as to procedural snarls that were present in the separate opinion of Mr. Justice Black (with which Mr. Justice Rutledge concurred) and the dissenting opinion of Mr. Justice Frankfurter in the Maggio case, cited in plaintiff's brief, at 333 U.S. 78 and 333 U.S. 81, respectively. In the latter of the cited articles at p. 885, Professor Rendleman writes of the collateral bar rule as follows:

The Court, when passing on contempt, deals with several factual and legal issues. The factual questions are notice and violation. . . Courts may manipulate the notice issue, sometimes reading it strictly and at other times almost abolishing it. Violation issues include not merely the question whether the contemnor's conduct was contrary to the injunction but also difficult problems concerning contemnor's intent to disobey and ability to comply. The two legal issues are the validity of the injunction under substantive law and the right of contemnor to assert the substantive issue. In deciding criminal contempts, courts often apply the collateral bar rule which prescribes that, because contempt collaterally attacks the underlying injunction and because preserving respect for the judiciary is an important policy consideration, a contemnor is precluded from assailing on substantive

grounds the injunction he has violated. The court may simultaneously affirm contempt and reverse the contemned injunction, punishing the contemnor for doing something he apparently had a right to do. Courts, therefore, frequently ignore the rule in criminal contempt cases, they should banish it from civil contempt completely. [Emphasis supplied.]

The contempt in the present case is by any standards applied thereto civil contempt. Viewing the contempt using the analytical tools provided by the above references, the contempt is also termed indirect. The contempt/sanction pattern fits the example cited in n. 37, 53 Texas L. R. 873 at 883, wherein a defendant is described as continuing to infringe a patent in violation of an injunction and the judge imposes a fine equal to the patentee's lost profits, the contempt is indirect and the sanction is civil-remedial.

Elsewhere the above-cited writer finds that cases which confuse the distinction between civil and criminal contempt are unfortunate in that, the extension of the collateral bar rule beyond the reason for its existence (to punish criminal contempt and preserve respect for the Court) deters or prevents the courts from examining the merits of contempt appeals. Such cases also tend to distort the concepts of voidness and subject matter jurisdiction. Ref. Pacific Gamble Robinson Co. v. Minneapolis & S. L. Ry., 92 F. Supp. 352 (D. Minn. 1950) (coercive and remedial confused); Franklin Mint Corp. v.

Franklin Mint, Ltd. 178 U.S.P.Q. 176 (E.D. Pa. 1973) (Collateral bar in civil contempt); Cassidy v. Puett Elec. Starting Gate Corp. 182 F. 2d 604 (4th Cir. 1950) (Collateral bar without distinguishing civil from criminal contempt).

POINT II. THE FINDING OF TRADEMARK LICENSE
VALIDITY AND THE FINDING OF COMMON-LAW
TRADEMARK DOES NOT EXTEND FROM THE "4G"
MARK TO THE "2G" MARK UPON CONSOLIDATION

The argument that the finding as to the 4G mark is res judicata does not extend to the 2G trademarks. Further, the existence of the trademark license with regard to the 2G trademark and the common-law trademark status of the 2G trademark are challenged by this argument on appeal. Both facts just recited are mediate data as to the holding concerning the 4G trademark, thus for example assuming for the moment that the trademark license is valid with respect to the 4G trademark, this datum or finding of fact is not extendable to the 2G trademark. Thus, although the series of 2G trademarks might conceivably be found to be confusingly similar to the 4G trademark and thereby become the subject of civil contempt on the part of the defendant, such finding does not extend the common-law trademark status of the 4G trademark to the series of 2G trademarks. In this respect the hornbook law of the Evergreens v. Nunan 171 F.2d 927, cert. den. 323 U.S. 720, 65 S. Ct. 49, (CA Second Circuit, 1944) Circuit Judge L.

Hand wrote:

Altogether different considerations should determine

whether any sort of fact, decided in the first suit, should conclusively establish "mediate data" in the second suit. Indeed, it often works very harshly inexorably to make a fact decided in the first suit conclusively establish even a fact "ultimate" in the second. The stake in the first suit may have been too small to justify great trouble and expense in its prosecution or defense; and the chance that a fact decided in it, even though necessary to its result, may later become important between the parties may have been extremely remote. It is altogether right that the judgment shall forever put an end to the first cause of action; but it is not plain that it is always fair that every fact-"ultimate" or "mediate datum"--decided in it, shall be conclusively established between the parties in all future suits, just because the decision was necessary to the result.

It is argued that the trademark license only licenses the "GIVENCHY-GENTLEMEN PARIS" and "GIVENCHY for CHESA" and that the Court was in error in extending the trademark license to design features not contemplated by the parties.

POINT III. THE VALIDITY OF TRADEMARK LICENSE
IS SUITABLE SUBJECT MATTER FOR APPEAL

Givenchy S. A. and Chesa International Ltd. have an agreement the one with the other the essentials of which are set forth as Appendix A-3 of the Brief for Defendants-Appellants. Under the agreement Givenchy authorizes Chesa to use a label "GIVENCHY-GENTLEMEN PARIS" and/or "GIVENCHY for CHESA". The agreement is silent as to any other use of trademarks present or future. The balance of the agreement excerpted for the brief addresses the question of designs which are narrowly defined as the "combination of style, pattern and fabric." Plaintiff-Appellee has asserted that this agreement extends to other intellectual property to wit: the 4G mark and the 2G mark. Even if by virtue of the consent the trademark license were not attacked as to the 4G mark, the status of the trademark license as to the 2G mark is a completely separate question concerning both law and facts.

The Court Order, Exhibit D of Plaintiff-Appellee's Motion for Summary Dismissal, etc., is in error in several respects, some of which are understandable and other respects are not. The Order recites that "GIVENCHY" is a common-law trademark when in fact it is registered on the Principal Register as Registered Trademark No. 831,095 on

June 27, 1967, Exhibit A, of above cited Motion. Seemingly in asserting its rights in intellectual property, the Plaintiff-Appellee felt in a stronger position indicating all trademark properties arose from common-law interests rather than a "mixed bag" of registered and common-law rights. Possibly, the decision below would have been favorable to the Defendants-Appellants had the Court been apprised of the fact that all items in the labeling paragraph of the agreement between Givenchy and Chesa are covered by registered trademarks and all items in the design paragraph were not. Maybe the Court in its wisdom would have found no common-law trademarks at all.

Arguing the case sub judice attention is drawn to the manner in which trademarks were allegedly created. According to the Statements of Facts of the Motion for Summary Dismissal garments bearing the supposed common-law marks were controlled and approved by Givenchy S. A.'s agent in the United States, Hubert de Givenchy, Inc. The testimony of Zimberg (Transcript of July 21, 23 and 28; RA-28 at pages 43 and 44) indicates that designs including the 2G and 4G items were those of Givenchy, S. A., a French company. While it is difficult to understand how a common-law trademark arises in a code-law country, such as France, a further difficulty arises in extending the terms of the Agree-

ment as set forth in Appendix A-3 of the Brief for Defendants-Appellants to the alleged common-law trademarks. As to this aspect, the finding of Jean D'Albret v. Henkel-Khasana G. m. b. H., 185 USPQ 317 (1975), is quite instructive. There it was held:

That is, it is well settled that ownership of a mark in the United States as between the foreign manufacturer of a product and the exclusive importer or distributor thereof in this country is a matter of agreement between them. In the absence of an agreement, express or otherwise, by the manufacturer of goods abroad that the trademark affixed to the goods at the time is the property right of the importer or exclusive distributor or in the absence of an assignment by the manufacturer to the exclusive importer or distributor of all of the former's rights in the mark in the United States together with the business and good will associated therewith, it is presumed that the manufacturer is the owner of the mark for such goods sold in the United States... Thus, an exclusive importer or distributor in the United States does not acquire ownership in the mark of a foreign manufacturer merely through importation and sale of the foreign made goods bearing the mark, or in fact, by the act of filing an application to register the mark in the Patent Office wherein ownership is alleged.

See: A. Bourjois & Co., Inc. v. Katzel, 260 U.S. 289 (1923); Scandinavia Belting Co. v. Asbestos & Rubber Works, 257 F. 937 (CA 2, 1919); Avedis Zildjian Co. v. The Fred Gretsch Mfg. Co., 116 USPQ 216 (CA 2, 1958); Spencer v. VDO Instruments, Limited, et al., 142 USPQ 72 (DC Mich., 1964); E. Leitz, Inc. v. Watson, Comr. Pats., 113 USPQ 209 (DC DC, 1957); affirmed 117 USPQ 13 (CA DC, 1959); Henry

a la Pensee, Inc. v. Societe a Responsabilite Limitee Henry a la Pensee,
113 USPQ 374 (CCPA, 1957); and Roger & Gallet v. Janmarie, Inc.,
114 USPQ 238 (CCPA, 1957).

Thus without applying the license agreement to the 4G or 2G marks, it is argued that Chesa International Ltd. is in no position to enforce such marks against the Defendants-Appellants.

Further as to validity of license, the present case is distinguished from those cited by Plaintiff-Appellee as in these cases the question is not so much as to the establishment of new marks, but is one of abandonment of existing marks. In Turner and Warner the mark is a pre-existing one and licensee's use inures to the benefit of the licensor. Thus, upon termination, licensee's use in the interim period may be substituted for licensor's use and thereby forestall the loss of mark through abandonment thereof. See also Weber Tackle Co. v. Del Mar Tackle Co., 179 USPQ 250 (1973) which is similarly distinguished.

POINT IV. SEARS-COMPCO CASES HAVE RELEVANCY
TO THE INSTANT CASE

Assuming for the sake of argument that no common-law trademark arises from the designs hereinbefore described and that a registered trademark has not issued, then the designs would be treated under other areas of industrial property-law. Such law would include the Sears-Compco rationale. The application of this line of reasoning is discussed in some length in the previously submitted brief for Defendants-Appellants.

The application of the rationale to cases similar to this one is found in Smith v. Chanel, Inc., 402 F.2d 562, 159 USPQ 388 (1968) wherein at 159 USPQ 393, the Court held:

A large expenditure of money does not in itself create legally protectable rights. Appellees are not entitled to monopolize the public's desire for the unpatented product, even though they themselves created that desire at great effort and expense. As we have noted, the most effective way (and in some cases the only practical way) in which others may compete in satisfying the demand for the product is to produce it and tell the public they have done so, and if they could be barred from this effort appellees would have found a way to acquire a practical monopoly in the unpatented product to which they are not legally entitled.

Disapproval of the copyist's opportunism may be an understandable first reaction. . . By taking his "free ride," the copyist, albeit unintentionally, serves an important public interest by offering comparable goods at lower prices. On the other hand, the trademark owner, perhaps equally without design, sacrifices public to personal interests by seeding immunity from the rigors of competition.

The Truck Equipment Service Company (TESCO) case cited by Plaintiff-Appellee is distinguished from the case at bar in several respects. First, a single design of a vehicle--the Cornhusker 800--had taken on a secondary meaning. No discussion of secondary meaning or unity of design is presented here. Secondly, Fruehauf was a large organization and by its copying, the smaller organization was potentially in danger of losing the consuming public identification of the mark (footnote 16). Third, both TESCO and Fruehauf were selling to the same public and are considered by the Court as competitors.

Absent a finding of common-law trademark then a freely copyable, copyright-type entity arises or a statutorily barred, design-patent subject matter exists. In either event unfair competition laws could not be applied to preclude the use of that which is within the public domain.

POINT V. THE MULTIPLICITY OF "G" MARKS BY
PLAINTIFF-APPELLEE IS RELEVANT

Through the testimony of Zimberg, supra, Plaintiff-Appellee asserts, "These so-called 'styles' used by Fashion Associates are the marks on which plaintiff had spent its considerable efforts so as to establish its reputation." There is nothing in the record to show that the word styles as used by Mr. Finkelstein is any different than the word style as used in the agreement between Givenchy S. A. and Chesa International, Ltd. (Appendix to Brief on Appeal, A-3). In the agreement, "style" is a defined term and is "deemed to refer more particularly to the cut, features and general appearance of the product concerned, and does not relate to its pattern or fabric."

In this regard, there is also a definite relationship between the multiplicity of the design-type trademarks and the recognition of the public that is a concomitant of establishing common-law entities. Pursuing Plaintiff-Appellee's position to its absurd limits, twenty-six designers each one gainfully employed in obtaining all the combinations and permutations of the designs for a given letter and each one provided with large capitalization to promote to the hilt such

designs could tie up the entire alphabet to the exclusion of all others.

Where does the trademark end and where does the use of letters as a design element become part of the pattern of the fabric or a mere feature of the garment? With numerous artistic renditions of a single set of letters the recognition factor fades and the design-for-design-sake dominates.

In this regard, Smith v. Chanel, Inc., supra, at 159 USPQ 391, is instructive as to the purpose of the trademarks, and the language thereof suggests the boundaries of trademark operation have been overly taxed by liberally finding common-law trademarks where design elements seem indicated. The Court there holds:

...the only legally relevant function of a trademark is to impart information as to the source or sponsorship of the product. Appellees argue that protection should also be extended to the trademark's commercially more important function of embodying consumer good will created through extensive, skillful, and costly advertising. The courts, however, have generally confined legal protection to the trademark's source identification function for reasons grounded in the public policy favoring a free, competitive economy.

Preservation of the trademark as a means of identifying the trademark owner's products, implemented both by the Lanham Act and the common law, serves an important public purpose. It makes effective competition possible in a complex, impersonal marketplace by providing a means through which the consumer can identify products which please him and reward the producer with continued patronage. Without some such method of product identification, informed consumer choice, and hence

meaningful competition in quality, could not exist.

On the other hand, it has been suggested that protection of trademark values other than source identification would create serious anti-competitive consequences with little compensating public benefit.

In the case at hand, do all "G" designs take on immediate secondary meanings which intimate that Hubert de Givenchy was here? Others have established Class 39 "G" marks--some of which are registered marks. Gross-Galesburg has their rounded interlocking double G mark and has maintained it for 40 years. "GGG" is familiar in men's clothing for countless years. Gucci, Groshire, Gimbels, etc., have their G's. With multiplicity of designs, identification of Givenchy is diminished and patterning rather than marking exists. The extending of common-law trademark status to a multiplicity of designs tends to protect the "values other than source identification" discussed in the Smith case above.

The argument is that such patterning is protectable and failure to obtain such protection leads to a freely copyable unregistered copyright or to statutorily barred, design patent subject matter both of which would be in the public domain.

It is urged that through the stream of variable designs, Givenchy, S.A. and Chesa International, Ltd. have undermined public recognition of the source of the product in such a way as to preclude creation of common-law trademarks.

The multiplicity of marks also bears on the ultimate test of validity of symbols, emblems or designs as trademarks, namely, the imparting of distinctive information as to source of sponsorship. The plaintiff-appellee herein or rather its alleged licensor has played design games with the letter "G" and now comes into Court claiming all his designs are common-law trademarks. In trademark terms every time Givenchy has turned to another G-form, he has self-destructively practiced dilution of his own distinctive mark. When the dilution is repetitively practiced and, for example, the symbolic element is used over and over again in a pattern upon a single yard of goods, the sponsorship quality imparted to the mark has been reduced in function to an ornamentative device. The ornamentative feature absent claiming identity of source is copyable unless the designer has gained protection of his artwork through the copyrighting or of the novelty through design patenting.

POINT VI. CONTRARY TO THE PLAINTIFF-
APPELLEE SUGGESTION THE DESIGN IS
A FREELY COPYABLE ENTITY.

The Lanham Act does not prohibit a commercial rival's truthfully denominating his goods a copy of a design in the public domain though he uses the name of the designer to do so. Indeed it is difficult to see any other means that may be employed to inform the public of the true origin of the design. Reference Societe Comptoir de L'Industrie Cotoniere Etablissements Boussac v. Alexander's Department Stores, Inc., 299 F. 2d 33, 132 U.S.P.Q. 474 (CA 2, 1962). See also John Wright, Inc. v. Casper Corp., 419 F. Supp. 292(1976).

POINT VII. NO AWARD OF ATTORNEYS' FEES
IS WARRANTED UNDER RULE 38 FEDERAL
RULES OF APPELLATE PROCEDURE

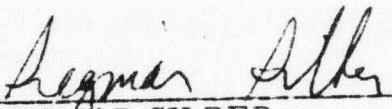
Contrary to Plaintiff-Appellee's position that this appeal is frivolous and time barred, there is adequate argument in opposition thereto. As indicated above, as this is a matter of civil contempt, collateral estoppel ought not be applied. Further, as to the 2G mark, there is serious question as to the validity of the underlying trademark license and its application thereto.

In general terms, the appeal treats matters which are at best in the gray borderline areas of trademark law and the boundary thereof with design law. It substantially treats the question of whether a symbol is a freely copyable design or a valid common-law trademark. Where such boundary areas are argued, it is respectfully urged that Rule 38, supra, is clearly inapplicable. Thus it is urged that Plaintiff-Appellee's application for award of attorney's fees is at best inappropriate and should not be favorably considered by this Court.

CONCLUSION

For reasons set forth above, Defendants-Appellants respectfully requests that the opinion and orders of the district court be reversed.

Respectfully submitted,



SIEGMAR SILBER
Attorney for Defendants-Appellants

COURT OF APPEALS
SECOND CIRCUIT

CHESA INTERNATIONAL, LTD.,
Plaintiff-Appellee,

- against -

FASHION ASSOCIATES, INC., HONG KONG
QUALITY KNITTERS, LTD: & JEROME FINKELSTEIN:
Defendants-Appellants.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

ss.:

I, James A. Steele being duly sworn, depose and say that deponent is not a party to the action,
is over 18 years of age and resides at 112 West 136th Street; New York, New York

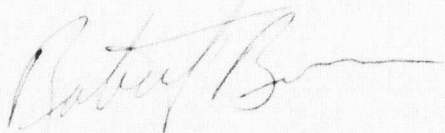
That on the 8th day of Sept 19 77 at 10 Columbus Circle
Ne Yor, New York

deponent served the annexed
Reply Brief

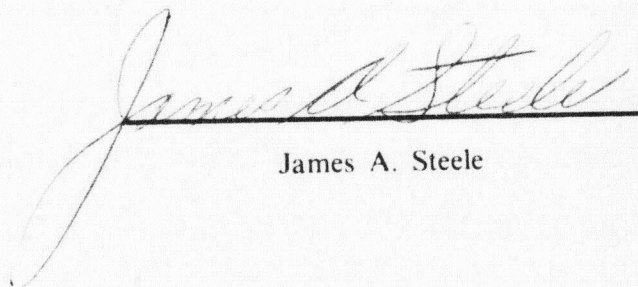
upon
Paul Marofsky,
c/o ~~Lusk~~ Ladas Parry, Esq

the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this 8th
day of Sept. 19 77



ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1979


James A. Steele